THE HABEAS CORPUS.

Several writs of habeas corpus having been sued out, on behalf of certain drafted or enrolled persons, in the United States District Court sitting at Boston, and these writs, with the returns made to them, being brought before Judge SPRAGUE for his consideration, the respondent for the United States interposed the proclamation of the President, suspending the privilege of the writ, as an objection to further proceedings.

To this of jection three answers were made by the counsel for petitioners. First, that these writs were issued before the proclamation of the President, and for that reason are not subject to its operation; second, that the proclamation does not embrace cases like the present; and third, if it does, it is not warranted by the act of Congress upon which it is found d.

We give so much of the learned Judge's argument as relates to the second of these heads:

"It is in the next place contended that if such be the true construction of the preclamation, it is not authorized by the statute of the 3d of March, 1863, upon which it is founded. That statute begins as follows: during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege writ of babeas corpus in any case throughout the United States, or any part thereot.'
"The President is thus authorized to suspend the privi-

lege in any case throughout the United States. No ca Not one is withheld from the operation of this power. All come within its scope, and the cases now before me are clearly comprehended in this language. But it is urged that this comprehensive and unrestricted language is limited by what follows, which is in these words: 'And whenever and wherever the said privilege shall be suspended, as aforesa'd, no military or other officer shall be compelled, in answer to any writ of habeas corpus, to return the body of any person or persons de ta ned by him by authority of the President: but upon the certificate, under oath, of the officer baving charge of any one so detained, that such person is detained by him as a prisoner under authority of the President, further proceedings under the writ of babeas corpus shell be su-pended by the judge or court having issued the said writ. it is assumed in the argument for the petitioner that this provision ex ends only to persons in confinement by special authority of the President, as State or political prisoners, and that it does not embrace those held under the ordinary or usual operation of any code or system, civil or

Without pausing to inquire whether this assumption be well founded. I will for the present at least consider it to be so, and that the special provision in this clause of the statute embraces only one class of cases. What is this special provision? It is that when the privilege is supended as to such prisoners the officers by whom they are detained shall not be compelled to return their bodies in answer to any writ of habeas corpus, and that upon making a certificate upon oath that they are detained as prisoners by authority of the President, the Court shall proceed no further. Here two things are enjoined in this class of cases. The officer is not to be compelled to produce the body, and his certificate under oath of the cause of detention is to be conclusive. Does the circumstance that this special provision extends only to those cases prove that no other were contemplated in the previous clause of the statute, and that the generality of its lan-guage should be restrained and limited to the single class to which the subsequent clause is applicable? Is such a deduction legitimate? The writ of habeas corpus had long been in frequent use in a great variety of cases. class was under the civil code, when persons were held by color of legal process, or as infants, or lunatics, or other wise. Another class consisted of persons detained under military authority as soldiers or prisoners of war, or spies, or as having committed some offence subjecting them to military restraint. The writ of habeas corpus is unquestionably applicable to all these cases, and had long been actually and frequently used therein. This must have been well known to the members of Congress, and when they declared in this statute that the President should be authorized to suspend the privilege in any case throughout the United States, they were well aware that each and all of these cases were embraced in that language Indeed one of the classes which I have just referred to must have been especially present to their minds in con-nexion with this very matter of the suspension of the Several instances had previously occurred in which

write of 'habeas corpus' had commanded officers to re turn the body of a soldier and obedience thereto had been One such case in particular is now in my recol-It was as early as 1861, in the city of Washington. An officer of the army having refused to bring up a soldier in obedience to a writ of 'habeas corpus' which had been granted by a Court of the United States, the Judges of that Court severally delivered opinions insisting emphatically upon the legal authority of the Court, and one or more of them animadverted in terms of much indispation upon the refusal of the officer These proceedings and opinions were published in the newspapers, and were of general notoriety. The refusal to obey the writ was by a subordinate officer in the city of Washing ton, and under the eye of the President himself. Con gress must have been aware that the President claimed privilege in the very class of cases now before me, and yet

"That language is to be understood and carried into effect according to its fair import, unless there be some thing in the subsequent portion of the statute inconsistent Is there any thing ? The terms of the first clause, as we have seen, comprehend three classes of cases-one is where persons are held in restraint under the ordinary administration or operation of the military code or system; another is where persons are held under the rdinary operation or working of the civil code or system, the term civil being used in contradistinction to military. In the practical working of both these systems it some times occurs, either by mistake or design, that persons are wrongfully held in confinement and seek relief by the writ of 'babeas corpus', The third class is where persons are held through the extraordinary interposition of the President and by his special authority. As to such persons the second clause of the statute has made a special provision in case of a suspension of the privilege relieving the officer from all obligation to return the body, and making his certificate conclusive. But the existence of this special provision can in no way interfere with the suspension of the privilege in other cases, but they are left to the operation of the suspension just as if that special provision

In the ordinary course of procedure some facts must exist to bring the prisoner within the class of persons as to whom the privilege is suspended, and such facts must be set forth in the return of the officer, and may be contested; and during the contestation, the court will require that the prisoner shall be within its control and brought up for that purpose. For example, if the proclamation had suspended the privilege in the case of persons held as soldiers, and who had been so held for the term of three months, then the officer's return must have set forth both those facts and both might have been contested. By the present proclamation only one of these facts is required, samely, that he is held as a soldier; but that may be controverted, and we may imagine a case in which this might be done with success. It may be made to appear, for instance, that the person held in restraint by the efficeri is a child of tender age, and that the return of the efficer that he is held as a soldier is a false pretence. Such is the course of procedure in ordinary cases. But, in the ex-traordinary case of persons held by the special authority of the President, the Legislature has declared that the certificate of the officer shall be conclusive, and that he shall not be compelled to produce the prisoner. In is not necessary that we should fathom the reasons for this peculiar provision. But it may be remarked that Congress with respect to political prisoners appear to have thought it best that the courts should not have any custody of the body, or try any question upon habeas corpus, but leave them to seek relief by some other procedure. And by the same statute Congress has provided another mode of relief as to all such prisoners who are 'citizens of States in which the administration of the laws has continued unimpaired in the sa d Federal Courts.

But whatever may be the reason, the truth is that, if we assume that the second clause in the statute extends only to political prisoners or those held by special authority of the President, it is plain that Congress has made a difference between the mode of procedure in that class and all other cases, and we must be governed thereby.

One thing further: The argument for the petitioners rests wholly upon the ground that the second clause was intended to be co-extensive with the first, and that it is necessary to give such a construction as will make them both embrace only the same cases. If this were so then the result, I apprehend, would not be to contract the language of the first clause, but to extend the second, so of the first. The intguage in the second clause is 'persons detained by authority of the President,' and again a to adopt this construction than it would to contract the done by ally construction, but only by doing violence to appear. its plain and inflexible language. I do not dwell upon this because I do not see the necessity of making the two clauses co-extensive."

A NATIONAL THANKSGIVING

By the President of the United States of America. A PROCLAMATION.

with the blessings of fruitful fields and healthful skies. To with immediate evil results, while the Times thinks the these benuties, which are so constantly evjoyed that we loss is on the side of the rebels, the English nation having are prone to forget the source from which they come, nothing to repent others have been added, which are of so extraordinary a nature that they cannot fail to penetrate and soften even the heart which is habitually insensible to the everwatchful providence of A!mighty God.

In the midst of a civil war of unequalled magnitude and verity, which has sometimes seemed to foreign States to invite and provoke their aggression, peace has been preserved with all pations; order has been maintained, the laws have been respected and obeyed, and harmony has prevailed elsewhere, except in the theatre of military confict; while that theatre has been greatly contracted by the advancing armies and navies of the Union.

Needful diversions of wealth and of strength from the fields of peaceful industry to the national defence have not arrested the plough, the thuttle, or the ship. The axe has enlarged the borders of our settlements, and the mines, as well of iron and coal as of the precious metals, have yielded even more abundantly than heretofore. Population has steadily increased, notwithstanding the waste that has been made in the camp, the siege, and the battle-field; and the country, rejoicing in the consciousness of augmented strength and vigor, is permitted to expect continuance of years, with large increase of freedom.

No human counsel bath devised, nor bath any mortal hand worked out, these great things. They are the gracious gifts of the Most High God, who, while dealing with us in anger for our sins, hath nevertheless remembered mercy. It has seemed to me fit and proper that they should be solemnly, reverentially, and gratefully acknowledged as with one heart and voice by the whole American people.

I do therefore invite my fellow-citizens, in every part of the United States, and also those who are at sea, and those who are sojourning in foreign lands, to set spart and observe the last Thursday of November next as a day of Thanksgiving and Praise to our beneficent Father who dwelleth in the Heavens.

And I recommend to them that, while offering up the ascriptions justly due to Him for such singular deliverance and blessings, they do also, with humble penitence for our national perverseness and disobedience, commend to His tender care all those who have become widows, orphans, mourners, or sufferers in the lamentable civil strife in which we are unavoidably engaged, and fervently implore the interposition of the Almighty Hand to heal the wounds of the nation and restore it as soon as may be consistent with the Divine purposes to the full enjoyment of peace, harmony, tranquellity, and union.

In testimony whereof, I have bereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this third day of October, in the year of our Lord one thou-ABRAHAM LINCOLN. eighth.

By the President WILLIAM H. SEWARD, Secretary of State.

FROM LATE SOUTHERN PAPERS.

The Richmond Sentinel says that there are now in that ity about eight or nine hundred captured officers and eight thousand privates as prisoners of war from the Union rmy. This number, it says, will be largely increased, in day or two, by further arrivals from the South.

THE SUFFERING AT RICHMOND.

The Richmond journals, though defiant in tone, no longer attempt to conceal the destitution and suffering which now prevail throughout the Confederacy. The Sentinel of Saturday last, in a leading article, says: "The rapid advance in all the necessaries of clothing and subsistence threatens the people with great distress. There is no disguiring the fact. A defeat on the battle-field could hardly bring more suffering." It then adds, in a vein of mingled entreaty and alarm: "Produce must be distributed, prices must be reduced, gains must be disgorged, or there will saw by right of conquest at the time of the events of 1812. be suffering intense, and intense suffering will beget-

The same paper, in its issue of the 2d instant, under the ad of " What the Government Must Do," says:

Tax as high as people can bear. Reduce the volume of the currency by every possible means. Suppress high prices by law.

Under the head of "What the People Must Do,"

" Pay taxes cheerfully. Sell to the Government and and was disposed to exercise the right to suspend the | the people promptly, and at fair prices. Be content with rivilege in the very class of cases now before me, and yet a declaring what authority the President should have to Government by investing in its bends. Hold property and suspend the privilege, they used language clearly em- personal service at the call or the need of the Govern-

Another indication of the stratened circumstances of the people is furnished in the fact that the Legislature has been compelled to resort to sumptuary measures for the regulation of the prices of all articles produced or manufactured in the State, and the sale of all other goods, wares an merchandise in the same. A bill introduced in the

Assembly fixes the following schedule of prices: Flour, twenty-eight dollars a barrel; corn, four dollars a bushel; bacon, one dellar a pound; wool, three dollars a pound; beans, four dollars a bushel; potatoes four dollars and onions five dollars a bushel; salt, five dollars for a bushel of fifty pounds; brown sugar, one dollar; coffee, three dollars; tea seven dollars and candles one dollar a pound; nolasses, eight dollars a gallon. The prices of other articles are fixed at proportionably exorbitant rates."

And this is the result of all the florid promises under which the Southern people were seduced into rebellica. They must pay enormous taxes "cheerfully " with starvation standing at their doors. Those who have any possessions, remnants of former prosperity, must sell to the Government on its own terms, no matter though they take the bread from the mouths of their own households. If any have imprudently put any thing by for " a rainy day." they must lend it to Davis and his fellows in infamy, that they may still manage to hold on in their rebellious course.

DEFENCE OF JEFFERSON DAVIS. The Sentinel has an editorial rebuke of grumblers and a

lefence of Gen. Davis. Of the croakers-meaning those who refuse to approve every thing the rebel chiefs may do-it save :

"They have but one more result to accomplish befor flecting our ruin and they seem to be laboring diligently They have but to satisfy the soldiers of they are constantly dirging in their ears, that Mr. Davis, who is our President for the next five years, is unequal to his position, and deserving only of the abuse of the press and the people. Introduce this sentiment among the seldiers—let them lose all confidence in the intelligence and the patriotism of the magistrate who directs their valor, and it needs no prophet to tell what will inevitably and Thus far the patriotism and good sense speedily follow of the army has been proof against all the appliances of the stay at home croakers. But these baleful influences will have their effect after a while. Continual dropping wears away stones. Indeed, it is alleged in the army itself that much evil has already been produced among the diers from a certain place, where the cause of croaking This is the natural tendency and in evitable result, and we may expect it on a larger and a general scale if the causes continue. The babitual, reckers, indiscriminate assailants of the President, and of every body and every thing, are more injurious to us than the armies of the enemy. They are still at their wand they will ruin us unless the people put them down They are still at their work,

WEST VIRGINIA THREATENED Gov. Boreman, of Western Virginia, has issued a pro-

clamation announcing that he has information that the rebel Generals Imboden, Jackson, and may be others, contemplate a movement of their forces through the contemplate a movement of their forces through the stip Prince of Wales, from Valparaiso for Antwerp, being as to make it applicable to all the cases, within the terms and laying waste the country and robbing, plundering, and murdering the people. He, therefore, calls upon all efficers of the militia and all persons subject to military duty 'person detained as a prisoner under authority of the President.' Now, it might be contended that persons held to assemble at their usual places of rendezvous at a moby a subordinate officer were held by authority of lis ment's notice, and to move to any point where their sercommander-in-chief, and that a person restrained of his liberty was imprisoned. And it would be more reasonable the proclamation has occasioned considerable excitement among the people, who are already vigorously preparing first clause to a single class of cases which could not be to meet, with arms in their hands, any enemy who may

The Russian squadron in New York barbor carries one hundred and seventy guns and is manned by 2,400 men. August 20th in pursuit of rebel pirates.

EUROPEAN NEWS.

The steamer "City of London," arrived at New York. brings English journals to the 24th ultimo.

The withdrawal of Mr. Mason from England is con The year that is drawing toward its close has been filled firmed. The London Herald deems the rupture fraught

> The Europe, of Frankfort, says Maximilian has accept ed the throne of Mexico, giving up his right, as the near est collateral prince, to the Austrian crown. The Arch duke Louis, brother of Maximilian, is to marry the only daughter of the Emperor of Brazil.

The Paris Moniteur has reproduced the letter from Warsaw of August 15, addressed by the Polish National Government to Prince Czarterisky, claiming belligerent rights, and its publication in the French official organ is considered by English and Continental journals as equiva- where it was easy for all to foresee (as there were

THE RUSSIAN REPLY TO FRANCE.

The Paris Moniteur publishes the reply of Prince Gortschakoff to the last note of the French Government on the Polish question, as also a memorandum annexed to the

The following is a translation of Prince Gortschakoff's despatch to Baron de Budberg :

"TSARKOE-SELO, Aug. 26, (Sept. 7,) 1863. "I have the honor herewith to send to your Excellency the copy of a despatch from M. Drouyn de L'Huys, which the Duke de Montebello was charged to communicat

"The Imperial Cabinet has taken cognizance of that document with all the attention which it deserves, and with it the sincere wish to lead this exchange of ideas to an understanding.

"After a careful examination, we have not found any motives to abandon the point of view expressed to you i my despatch of the 1st (13th) of July.

"We believe that we are only meeting the views of the Minister of Foreign Affairs of France by abstaining from

prolonging a discussion which would not attain the object of conciliation which we have in view, if it had no other result than to confirm each of the two Governments is their opinions upon a question where we regret sincerely ot agree with the Cabinet of the Tuileries. "We will only dwell upon one point of M. Drouyn de L'Huys's despatch, because we wish to avoid any further source of misunderstanding. I mean the allusion made

more than once, and under different forms, by the French Minister of Foreign Affairs, to the western provinces of Russia, as participating to a certain degree in the international stipulations which in 1815 regulated the fate of the Duchy of Warsaw.

"The Imperial Cabinet cannot admit that point of view in any measure-not in the most restricted one; and your Excellency is requested to repeat to M Drouyn de L'Huys the declaration already made in my former dispatch, that his Mejesty the Emperor, always ready scrupulously to fulfill his obligations toward all the Powers, must peremptorily exclude, even in an intercharge of friendly views, any allusion to such portions of his Empire to which no international reference whatsoever refers As regards the other points touched upon in the de

syatch of the French Minister of Foreign Affairs, we prefer o speak of those where we agree at least in intention The French Government is desirous of seeing a stat of affairs established in Poland which would give tranquillity sand eight hundred and sixty-three, and of the to the country, quiet to Europe, and security to the related and sixty-three, and of the Independence of the United States the eightysire, and will do every thing in our power to realize it. Our august master remains animated with the most benevolent intention towards Poland, and with the most concili

ating ones toward the foreign Powers. The welfare of his subjects, of every race, and of every religious confession, is an obligation which his Imperial Majesty has accepted toward God, his conscience, and his people. The Emperor devotes all his solicitude to fulfill it. As regards the responsibilty which his Majesty may assume in his international relations, those relations are regulated by international law. The violation of those undamental principles may alone lead to a responsibility

Our august master has always respected and observed these principles toward other States. His Majesty has the right to expect and demand the same respect on the part the other Powers.
"You will please to read this despatch to and leave a

copy of it with the French Minister of Foreign Affairs " I am, &c.

MEMORANDUM FOR THE THREE POWERS. To the above despatch is annexed a memorandum fo

thus abridged: "The memorandum appended to Prince Gortschakeff's

So far back as the year 1812 Russia announced her wish to regenerate Poland as soon as the work of Europe's maintains that the Emperor Alexander, in taking the mitiative in 1815 of the reforms to be granted to Poland, did not give to Europe the right to interfere in the interior sffairs of Russia. He discusses the different points pro-posed by the Powers, and maintains the impossibility of an armistice or of a conference of the Powers, and prefers awaiting the re-establishment of tranquillity before grant. orms to Poland. Prince Gortschakoff topes that the difference of opinion will not cause any serious dissent between the Cabinets, or disturb the peace of Europe Matters could only assume such character if the authors of the revolution were permitted to develop their such tolerance is only to be apprehended from the Powers who pursue, under the appearance of diplomatic action the carrying out of the most extreme views of the Polish revolution, which would lead to the subversion of existing treaties and the balance of power in Europe. The Cabi nets who have taken as a basis the serupulous execution of the treaties of 1815 could not have such tolerance."

RUSSIAN WARLIKE PREPARATIONS The Paris Siecle points to the warlike preparations of Russia, and save :

"The despatches of the Government of St. Peters its military preparations At Helsingfors it tells the people of Finland that it relies upon them if the integrity of Russia should be menaced. After the orders bestowed on Mouravieff, it rewards Vice Admiral Novossilski for his labor in superintending the fortifications of Cronstadt. New war vessels are to be constructed in Finland, where twenty thousand troops are siready stationed. Eleven plated and turreted gunboats will leave the dock yards of St. Petersburgh in the spring. Lastly, on the banks of the Amoor, a body of troops, composed of Baskirs, Calryues, and Chinese, is being formed, to be made use of, says the

Breslau Gazette, against the French and English." The London Times in its City article says that Exchange people were unanimous in their views on the Polish ques-

ANOTHER ARRIVAL FROM EUROPE.

Mr. Mason's letter to Lord Russell, on withdrawing from London, is published. It quotes his instructions from Richmond, which states that Mr. Davis believes that the English Government is determined to decline his overtures for friendly relations, and will not receive a minister, and therefore it is no longer conducive to the interests nor consistent with the dignity of the Confederate Goveroment for Mr. Mason to continue his residence at London. The London Index says it is not centemplated to withdraw Mr. Slidell.

The prospect of the fall of Charleston is much debated in England. The friends of the South assert that it will not affect the issue, and the editor of the Army and Navy Port Hudson.

The rebel privateers Alabama, Georgia, and Conrad have captured and bonded several additional American ships. The following are the details:

The privateer Alabama arrived at Table Bay August 5th, capturing on her way the ship Sea Bride, from New York for the Cape of Good Hope. She also captured a vessel named Lela, making in all fifty prizes. She left the Cape August 15th. The privateer Georgia put into Simon's Bay for coal on

er fitteenth prize.

The privateer Conrad, now called the Tuscaloosa, also

put into Simon's Bay on the Sih of August. She captured and bonded the ship Santee. The United States Consul protested sgainst the capture of the Sea Bride, on the ground that she was within British waters, and also demanded the delivering up of the pirate Tuscaloesa, late Conrad, on the ground that being a prize and not yet condemned, she violated the Queen's proclamation by entering a British port. The Governor, however, decided adversely in each case, whereupon the Consul entered

The United States steamer Vanderbilt left St. Helens

WASHINGTON.

*LIBERTY AND UNION, NOW AND FOREVER, ONE AND INSEPARABLE."

THURSDAY, OCTOBER 8, 1863.

MILITARY CRITICISMS.

It was to be expected that the public press would make the recent reverse which has befallen our arms in Northern Georgia the topic of comment and animadversion. That such a disaster should result from a paucity of troops at the very point The compensation which arises behind the sad picture of broken battalions and an army in retreat is the lesson taught by the disaster. The repulse in Northern Georgia is a fresh illustration of that principle of which the whole course of the war is a series of illustrations, namely, that all the successes achieved both by the Union and the rebel lent to an unofficial recognition by Napoleon of the Polish many to predict and indicate) that the insurgent military authorities were massing their forces, is confessed on all sides to be a cause of just complaint against the general military direction to which our armies are subject, whether that direction proceeds from the President, or the General-in-Chief, or the Secretary of War, or from all three combined, or sometimes from one and sometimes from another of these high military func-It is a part of the misfortune of the military

case, who is responsible for the military direction which has controlled the situation, as it is, we fear, in a great degree, the secret of our military disasters that in some cases there has been such a confusion in the relations that exist between the Generals in the field and the military authorities in Washington that there has been no direction at all in the proper sense of the term. When the by way of Tuscumbia, and that tokether these two vict titular General-in-Chief of all our forces has for weeks been left in total ignorance respecting the movements and plans of the army nearest to him, it was impossible that he could give any intelligent ensemble to our military arrangements throughout the whole extended field of operations; and this we know has been the case more than once. Military plans the most important have been concerted, and military demonstrations the most formidable have been arrested by the President without the privity of Gen. Halleck, or without even imparting to him a knowledge of the situation resulting in a particular field from the dispositions that had been made or overruled. And all this while he was presiding, or is supposed to have been presiding, over the general operations of our armies in other fields-at what disadvantages the reader will readily conceive when he takes into account the fact that, in a long line of operations, concert of action, if not simultaneity of movement, is indispensable to success at any and every point. And what concert of action can there be, or what simultaneity of movement, where there is no single presiding mind who is responsible, and who is known to be responsible? For responsibility which has no known depositary is not a responsibility which is worth much to the nation. In the State Department, in the Navy Department, in the Treasury Department, and in every other Executive Department of the Government, there is a known responsible head, and hence, in great part, we doubt not, the three Courts of London, Paris, and Vienna, which is the superior success which has attended their administration. Who supposes, for instance, that the navy would have been as efficiently managed as it is now admitted to be, if its operations had been subject to the undefined and intermittent control deliverance had been accomplished. Prince Gortschakoff of the President, Mr. Secretary Welles, and some Rear-Admiral-in-Chief-each and all perplexed in their several spheres by a Committee of Congres sional land-lubbers charged with the "conduct"

Whoever is responsible for the military situation which superinduced the disaster of Chickamaugs, it is now easy to see that that situation was one which could not have been created if there had been that intelligent forecast in the general conduct of our military operations which the country has a right to expect from those to whom it has committed treasures so immense, interests so vast, and issues so tremendous And in so speaking we do but reflect the concurrent voice of our contemporaries without distinction of party. The comments of that leading Administration paper, burgh are warlike, and its acts are not less so It parades the New York Times, are as follows. We quote from its number of Wednesday last:

"The public has learned with astonishment that the numbered, and was compelled to suspend his march, after a fie ce engagement. And this astonishment is perfectly reasonable, inasmuch as the object of this onward movehad recovered at St. Petersburgh to about par; that apprehensions of war had passed away, but that the Russian promenade or a great waste of human life; and if this want of forethought as well as inadequate means.

" It is useless to tell us, in reply to this, that the rebels, ANOTHER ARRIVAL FROM EUROPE.

The steamer Persia, from Liverpool on the 26th via Queenstown on the 27th, arrived at New York yesterday. when the rebel- batteries were all 'masked,' and when Fire Zouaves climbed up on the backs of the rebel cavalry horses, when at full gallop, and remorselessly cut the throats of their riders. But the nature and value of 'interior lines' are now so well known, and the possession o them by the rebels is so notorious, that it is as absurd for the War Department or the Generals in the field to omit this circumstance from their calculations in preparing for any operation as to take no count of the rebel cavalry or has wisely determined to reinforce Gen. Roseartillery, or of the badness of the roads, or thickness of the woods. The problem we have to solve is, not how to defeat the rebels under certain conditions, but how to de-feat them under the conditions that actually exist, and with the advantages that they actually possess. They have the 'interior lines,' just as they have cotton to raise money on, and slaves to do their hard work, and a forest covered Gazette cannot perceive what great military advantage would accrue from the capture certainly none equal to the things they have to count on, just as we have a large population, plenty of money, and a powerful navy; and the temporary cessation of any when we encounter them there is no controlled to the things they have to count on, just as we have a large crans may "cause the temporary cessation of any when we encounter them there is no controlled to the things they have to count on, just as we have a large crans may "cause the temporary cessation of any when we encounter them there is no controlled to the things they have a large crans may "cause the temporary cessation of any when we encounter them there is no controlled to the things they have to count on, just as we have a large crans may "cause the temporary cessation of any when we encounter them the capture of Knoxville and Chattanoora Vickshure and the capture of Knoxville and Chattanooga, Vicksburg and when we encounter them there is no more justification for active operations by the Army of the Potomac. our not being prepared for this than for their bullets or

their torpedoes. "If we have learnt any thing from the war, it is that have been visiting the ports at the Cape of Good Hope and there is no way of meeting concentration of forces on the rebel side but by concent ation of forces on ours. have many times, since the commencement of the straggle, been overwhelmed precisely in the same manner that Rosecrans has been overwhelmed at Chickamauga, and in each case we have been forced to recover our ground after the battle by bringing up the forces which ought to have been brought before it. Que tithe of the activity which is displayed in forwarding troops after we have met with a reverse would, if displayed before the action takes place, put a very different complexion on our affairs. Even if these checks did not postpone the great issue, and did not increase the risk of foreign complications, we have not, we trust, yet become so hardened to the horrors of war that the lives of thousands of brave men furnish no argument in favor of forethought and caution.

> It may be said that these are the reflections of an unmilitary journal, which, however friendly to the Administration, is not entitled to speak with much authority on military matters. We there-

the following terms. As the Journal is edited by was made against Roscerans. a gentleman bred to the profession of arms, and who has the merit of having pointed out the defects in our general strategy while all was still an opinion in the premises will be universally conceded, even by those who may resist his conclusions. We quote from the Journal of the 26th

" It is perhaps premature to attempt to say whose shoul-

Rosecrans' army on Saturday and Sunday last; but it would be the sheerest intellectual stultification to blink the fact

that there has been very great blundering somewhere

arms are the result of correct military action, and all the defeats that have befallen both us and the enemy the result of incorrect military action.
"The situation of Gen Rosecrans' army is a peculiar one; it forms the centre of the grand Union cordon mili-taire of which the armies of the Potomac and of Grant form the wings. To attempt grand operations with one portion of the line while the others are consigned to a rôle of inactivity, is simply to invite the enemy to a concentra tion against that particular portion for its annihilation Every man capable of forming an enlarged view of mili tary operations took it for granted that, with the possession of Chattanooga and the great central mountain system, the whole form of our military combinations and operations critics that they do not know, in any given would undergo a change. This at length gave us what the whole country had been in the habit of looking upon as the key to the situation—interior lines, forcing the rebels upo exterior lines, and opening the way to their defeat in d tail. We ourselves know positively that Gen. Rosecran fully expected that the two great armies of the West, his own and that of Gen. Grant, would form a combined ration in the present campaign—that to meet his advance a powerful column would be sent up the Tennessee rive rious armies would enter upon the task of ann hilating rebellion in the central zone. But he, and those of who looked forward to this change in the military policy waited in vaio for any such proof of wisdom. Alone unaided Gen. Rosecrans was forced to enter upon campaign. His army, small, but in admirable morale and with the habit of victory upon it, began the advance, and the movement was attended with entire success. Bragg, flanked at Shelbyville, retreated to Tullahoma; flanked at Tuliahoma, he retreated to Chattanooga; flanked again at Chattanooga, and one of the two lines of communication with the east cut, he fell back to Dalton to cover the other

> headed military men who sit in power at Richmond that a crisis was upon them, and that the most vigorous measures were required to meet it. "And to meet it, the one method was the massing of a force adequate to defeat the victorious and advancing ene my. We are of course in the dark as to the moves made does Gen. Rosecrans' advance begin seriously to threaten Chattanooga, than Johnston and Pemberton, with the remants of their armies and what they could gather around them, are called up; at the same time large detachments (at least a division from each corps) are hurried off from Lee's Army of Virginia, and sent round, as the other line the meanwhile severed, by way of Charleston and Atlanta. It must be confessed the occasion was an opportude one for their making these detachments. The Union force that had menaced Mobile and held Johnston in position to cover it, was eliminated from the problem; and with regard to Virginia, the rebel chief felt at least secure in being able with even a small force to keep back any advance of the Union General long enough to enable a battle to be fought in the West, when the troops, if wanted, could be returned. In the mean time Bragg gives up Chattanooga without a musket fired in its defence—the rebels justly reasoning that our territorial conquests are of small moment while our military policy is bad. By the time Gen. Rosecrans is fairly in Chartanooga, the rebels are concentrated in position below, resolved, as we may suppose, that the Union General shall psy dearly for his next step in advance.

line. At this point it must have been evident to the clear

"It is not quite clear to us why Gen. Ro ecrans took that step in advance. If he had remained at Chattanooga looking well to his communications, drawing in Burnside troops, and fortifying his position, he might have remained nparative security until reinforcements should be sent But if the au horities had definitely resolved that no reements should be sent him. it was in keeping with Rosecrans' ardent and impetuous nature that he should sick to strike quickly a destructive blow at the enemy knowing well that if the rebels should be a lowed time to oncentrate in front of him, his own position at Chattan would be exposed to the same flanking practice be had himself so successfully exercised toward the enemy.

"What may be the precise estimate to be put upon this The loss of the battle itself is not so discouraging as the fatuity that placed the Army of the Cumberland in a posi tion to be thus handled. Battles lost and battles won are the natural strophe and antistrophe of war. We have learned to bear them both with becoming calso; but a vicious military policy is what strains the temper almost beyond the verge of endurance. The Government is now, we are told, rapidly reinforcing Gen. Rosecrans. It able to do it after the defeat, it should have been able to do it before the defeat; but if even this severe practical lesson was needed, the result may not be altogether without its compensations. In our issue of two weeks ago we pointed caution that drew down severe animadversions upon us. It is with no satisfaction that we are to-day able upon the practical justification of our position in the re-pulse in Georgia, which furnishes a fresh illustration that the great principles of war cannot be violated with im-

These criticisms would have nothing more than a theoretical value if we could hope that the "vicious policy" which it points out was to be superseded by "correct military action." The writer justly says that "to attempt grand operations with very first time Rosecrans came in contact with Bragg, one portion of the line that forms the grand Union ten miles outside Chattanooga, he found himself far outcordon militaire, while the others are consigned to a role of inactivity, is simply to invite the enemy to a concentration against that particular portion ment was not simply the possession of Chattanooga, but the capture of Atlanta, and with it the whole system of for its annihilation." And yet this is the very Southern railroad communication—the subjugation of the whole State of Georgia, the isolation of South Carolins, thing which the military authorities in Washingand the 'turning' of Virginia and North Carolina. If this ton are still doing, if their favorite organs may be trusted to speak by authority. The journal which was its object, its stoppage at the very outset, by a superior force, proves it to have been commenced with great and which if it has no right to south for the land. and which, if it has no right to speak for any body else, has at least a right to speak for them-we al lude to the Daily Chronicle of this city-announces in its number of Tuesday last that "the Govern ment has wisely determined to reinforce General Rosecrans, even though it cause the temporary cessation of any active operations by the Army of the Potomac. Tennessee has become the great battle-field of the hour." We have no objection to hear it officially stated that "the Government crans," though we make ourselves hold to say that it might, we think, have reached this determination even more "wisely" before his defeat than afterwards. But we do object to have it publicly crans may "cause the temporary cessation of any We do not see the necessity of confining the army of the Potomac to the role of inactivity because Rosecrans has been reinforced from its columns, as this writer indicates And still less do we see the necessity of conveying to the enemy information by which he can instantly profit, because it releases him from any further anxiety about the power or the plans of Gen. Meade. In the Richmond Enquirer of the 26th ultimo we read as follows : "While events linger in Tennes ee, the situation

Northern Virginia has become critical. The enemy is pre-paring for a general attack on the lines of the Rapid-Ann. In the past few days the enemy has been massing his troops at Culpeper, and his encroachments on the rail-road and river indicate very plainly the determination to

The military organ of the Administration has generously relieved the enemy from any apprehension on this score, and the Richmond authorities fore cite, for the instruction of our readers, the fol- are apprized that they may safely draw on the lowing animadversions of the "United States Ar army of Lee for the reinforcement of Bragg still been heard in the premises.

my and Navy Journal," which, in its last number, | further than they had already done by sending refers to the defeat of Rosecrans and its causes in the corps of Longstreet to aid in the attack that

On the same day that this announcement is made in Washington the Richmond papers contained a despatch from Gen. Lee to Gen. Jefferson Davis, prosperous in appearance, his right to pronounce in which the former communicates to the latter "that the Eleventh and Twelfth Corps of the Army of the Potomac had been sent to reinforce Rosecrans." And, as if to supplement this useful piece of intelligence, the Washington sheet announces "a temporary cessation of active operations by the ders ought properly to bear the shame and the blame that have befallen the national cause in the repulse of General Army of the Potomac"-a consequence which Gen. Lee, if left to draw his own unaided conclusions, could not certainly infer from the reported transfer of the two corps.

There may be no intentional treason in giving such intelligence to the enemy. We incline, in charity, to think there is none in the case before us, but it is a part of the general penalty which the national cause sometimes has to pay for heedlessness outside of official place, as well as for mismanagement in it.

ELECTIVE JUDICIARY ILLUSTRATED.

Our readers are aware that the Court of Appeals of the State of New York, being the court of last resort in that State, has recently rendered a decision in some cases involving the question raised as to the constitutionality of the act of Congress declaring Treasury Notes a legal tender. The majority of the court affirmed the constitutionality of such notes, but two of the Judges on the bench-Denio, the Chief Justice, and Mr. Justice Selden-dissented from the decision of the majority. Both of the dissenting Judges evidently acted in obedience to the most solemn convictions of conscientious duty in withholding their concurrence from the opinion of the majority. After stating at great length the considerations which had influenced and determined his decision, Chief Justice DENIO concludes his opinion in the following words :

"I shall be well satisfied if a majority of my brethren. and the Federal court in which our decision will ultimatey be reviewed, can reconcile the legislation which the defendant challenges with a reasonable interpretation of the Constitution of the United States. It is not to be de-nied that it constitutes part of a plan of public finance which, whether wisely organized or not, it is extremely important in the present crisis to maintain, if it can properly be done. If my sense of duty would allow me to decide the case as I should wish the law under the circumstances at this moment to be, I would unite in a judgment which should establish the validity of these legal tender notes; for the preservation of the Federal Union, which is said to be concerned, is the most ardent, I may say passionate desire of my beart; and no one, I think, can honestly pretend that this can be accomplished except by the vigorous employment of the armed force of the nation; and to that purpose the realization and expenditure ot immense pecuniary resources are plainly indispensable. No man can have a stronger sense of the absolute causelessness, nay, the utter wickedness, of the insurrection than that which I entertain, or of the duty of every citizen, whether in public office or a private station, of yielding to the constituted authorities, upon all questions of policy and expediency, not only implicit obrdience, but a sincere and generous confidence and co-operation. But we are placed here to determine the law, as we under stand it to be, in the controversies which are brought be fore us, and I should forfeit forever my own self-respect if I could unite in a judgment affirming the constitutional validity of the legislation in question, believing, as I must, that its provisions are repugnant to the letter and spirit of

In the opinion of Chief Justice Denis, and in the reasons for it, Mr. Justice Selden concurred. Now, it so happens in those political divisions which obtain even among members of our courts, Chief Justice Denio is known as a Democrat, while Judge Selden is a Republicar, and not only a Republican, but a candidate for re-election to the same office on the Republican ticket now pending before the people of New York. It is under thes circumstances that the New York Tribune holds the following language in regard to his eligibility as a Judge:

"No man who knows Judge Selden will harbor a doubt of his perfect integrity. If his opinion does question the power affirmed by the action of Congress in the premises, we may be sure that it is his conscientious conviction that the power does not exist. But, while we thus do justice to his motives, we have a duty to perform to our country. We read in the Federal Constitution that 'The Congress shall have power to coin money, regulate [no merely declare] the value thereof, and of foreign coin; and that 'No State shall make any thing but gold and silver coin a tender in psyment of debts;' and we hold that here is, first, the broad power 'to coin money and regulate its value' conferred on Congress, and, next, a mitation imposed on the action of the States in regard to paper money which would have been extended to that of ngress had such been the intent of the Convention. And it will be very difficult for us to vote even for one we es-teem and trust so thoroughly as Judge Selden if he really denies the power in question. At the recent Union Stat Convention we broached this subject to certain of the Rochester delegates, stating that rumors were affoat that Judge Selden might feel constrained to pronounce the legal tender act unconstitutional; and that, if such were the fact, it ought to be known to the Convention. We were assured that no such intention on his part was known to his nearest friends—so that the rumor we had beard must be unfounded. All doubts being thus removed, Judge 8. was renominated without a dissenting voice. Had it then and there been known that he would pronounce against the legal tender set it might have been otherwise; lecision of the Court of Appeals broadly denying the cortitutionality of that act would have given a terrible, even though but temporary, blow to the whole fabric of business and credit, beside tending strongly to paralyze the efforts of the Government in prosecuting the war for the Union.

No one appreciates more sensibly than we do the

great shock which would be given to the public credit at the present juncture, if the Court of last resort should be con pelled, in obedience to its conscientious convictions of judicial duty, to pronounce against the constitutionality of the quality of legal tender imparted to the Treasury note currency by the legislation of Congress. But there is something which ought to give a greater shock to the public conscience than any that can result from considerations of material interests, and it is the lamentable deterioration of political morality developed by a fact like that which the Tribune confesses when it says that this honest Judge has, in a degree, justly forfeited the support of his own party because he has made a decision according to his conscience, and when it adds that if such a result of his honest convictions could have been foreseen, he would never have been placed in no mination by his political friends. The public is apprized of the humiliating fact that at the late Republican Convention the editor of the Tribune " broached" this subject to certain of its members supposed to be informed as to the precise opinions which would control the mind of Judge Selden in approaching the decision of this question, and it is added that "all doubts" of a disagreeable kind were removed by the representations then and there made on the part of his friends, and he was accordingly re-nominated without a dissenting voice. The anomaly of an "elective judiciary" holding office by the tenure of political favor was rarely if ever placed in a light which more clearly betrays its deformity. The inquiry made to test the qualifications of the elective Judge in New York is not whether he is learned and honest, but whether he has already made up his mind to decide a certain question in a certain way before argument has